

FILED

DEC 06 2005

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By RD Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHANE C. TWIGG,

Defendant.

Case No. A05-0041 CR (RRB)

**ORDER DENYING SECOND
MOTION TO DISMISS**

Defendant Shane C. Twigg ("Twigg") moves to dismiss Count II of the Indictment and argues that Count I must be either amended or dismissed.¹ On November 16, 2005, the Government's Motion to Dismiss Count II was granted.² Thus, the only question before the Court concerns the sufficiency of Count I of the Indictment.

Count I of the Indictment charges that Twigg "knowingly did forcibly assault, resist, oppose, impede, intimidate, and interfere with a Special Agent with the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives while the Special Agent

¹ Clerk's Docket No. 32.

² Clerk's Docket No. 34.

was engaged in his official duties, and in the commission of those acts, inflicted bodily injury on the Special Agent, all of which is in violation of Title 18, United States Code, Section 111(a)(1) and (b).³ Twigg argues that the injuries to the Special Agent do not constitute "bodily injury," and should be deemed a "simple assault."⁴

However, whether Twigg is guilty of the aggravated crime, the lesser included offenses, or no crime at all is a question for the jury. The Court already held that Count I sufficiently set forth the elements.⁵ Therefore, the Indictment neither needs to be amended nor dismissed. As such, Defendant's Motion to Dismiss Indictment is **DENIED**.

ENTERED this 5 day of December, 2005.



RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

PD 12-6-05

A05-0041--CR (RRB)

R. HERZ
S. COLLINS (US ATTY)
US MARSHAL

US PROBATION
MAGISTRATE JUDGE ROBERTS

³ Clerk's Docket No. 1.

⁴ Clerk's Docket No. 32 at 5.

⁵ Clerk's Docket No. 26.